

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
VERN L. SALSBURY, )  
 )  
Appellant, )  
 )  
v. )  
 )  
SOUTHWEST AIR POLLUTION )  
CONTROL AUTHORITY, )  
 )  
Respondent. )

PCHB No. 849

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

THIS MATTER, the appeal of a \$250 civil penalty for an alleged open fire violation of respondent's Regulation I having come on regularly for formal hearing on the 27th day of October, 1975 in Centralia, Washington, and appellant Vern L. Salsbury appearing pro se, and respondent Southwest Air Pollution Control Authority appearing through its attorney, James D. Ladley with William A. Harrison, hearing examiner presiding, and the Board having considered the exhibits, records and files herein and having reviewed the Proposed Decision of the presiding officer mailed to the parties on the 22nd day of

1 December, 1975, and more than twenty days having elapsed from said  
2 service; and

3 The Board having received no exceptions to said Proposed Decision  
4 and the Board being fully advised in the premises; now therefore,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
6 Decision containing Findings of Fact, Conclusions of Law and Order  
7 dated the 19th day of December, 1975, and incorporated by this  
8 reference herein and attached hereto as Exhibit A, are adopted and  
9 hereby entered as the Board's Final Findings of Fact, Conclusions of  
10 Law and Order herein.

11 DONE at Lacey, Washington, this 4th day of February, 197

12 POLLUTION CONTROL HEARINGS BOARD

13 Chris Smith  
14 CHRIS SMITH, Chairman

15 W. A. Gissberg  
16 W. A. GISSBERG, Member

17  
18 WALT WOODWARD, Member

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21  
22  
23  
24  
25  
26  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

CERTIFICATION OF MAILING

I, Dolories Osland, certify that I deposited in the United States mail, copies of the foregoing document on the 4<sup>th</sup> day of February, 1976, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Vern L. Salsbury  
13616 - 50th Avenue East  
Tacoma, Washington 98404

Mr. James D. Ladley  
Attorney at Law  
P. O. Box 938  
Vancouver, Washington 98660

Southwest Air Pollution  
Control Authority  
7601-A Northeast Hazel Dell Avenue  
Vancouver, Washington 98665

Dolories Osland  
DOLORIES OSLAND, Clerk of the  
POLLUTION CONTROL HEARINGS BOARD

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CONCLUSIONS OF LAW AND ORDER

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CONTROL AUTHORITY, )  
Respondent. )

PCHB No. 849

PROPOSED DECISION

This is an appeal of a \$250 civil penalty assessed against appellant, Vern L. Salsbury, for allegedly violating Section 4.01 of Regulation I of the respondent, Southwest Air Pollution Control Authority (SWAPCA). The matter came on for hearing before the Pollution Control Hearings Board (William A. Harrison, Hearing Examiner, presiding alone), convened in Centralia on October 27, 1975. Respondent elected a formal hearing.

Appellant, Vern L. Salsbury, appeared pro se; respondent appeared by and through its attorney, James D. Ladley.

EXHIBIT A

1 Witnesses were sworn and testified. Exhibits were admitted. From  
2 testimony heard and exhibits examined, the Presiding Officer makes these

3 FINDINGS OF FACT

4 I.

5 Approximately 15 years ago, appellant, Vern L. Salsbury, purchased  
6 a house and lot located at 240 Paxton in the vicinity of Kelso, Cowlitz  
7 County, Washington. At all times relevant to this appeal, Mr. Salsbury  
8 has been the owner of that property.

9 II.

10 Mr. Salsbury lived in the house at 240 Paxton until it was  
11 destroyed by fire in July of 1974.

12 III.

13 In the spring of 1975, Mr. Salsbury made up his mind to clean up  
14 the lot at 240 Paxton by burning material left by the fire that  
15 destroyed his home. The first step taken by Mr. Salsbury was to inquire  
16 of an official at the Kelso Fire Department whether any permits or  
17 permission were required to ignite a fire on his property. An official  
18 of the Kelso Fire Department replied to this inquiry that no permit or  
19 special permission were required so long as the fire did not exceed four  
20 feet, by four feet, by four feet in size, and so long as it emitted no  
21 black smoke. The official of the Kelso Fire Department made no effort  
22 to contact SWAPCA before providing Mr. Salsbury with this information.  
23 The information provided to Mr. Salsbury conflicts with a written  
24 internal directive of the Kelso Fire Department. This internal  
25 directive limits permissible outdoor fires to those containing only

26  
27 PROPOSED DECISION

1 natural vegetation. Such directive was drawn up in response to SWAPCA  
2 regulations and although a proposed fire would meet all standards of the  
3 Kelso Fire Department, one seeking to burn "natural vegetation plus"  
4 was to be denied a permit and referred to SWAPCA offices.

5 IV.

6 On April 11, 1975, appellant, Vern L. Salsbury, set a fire on his  
7 property at 240 Paxton. This fire contained untreated 2x4's and 2x6's  
8 which had been the walls of Mr. Salsbury's home and contained also  
9 natural vegetation gathered from the property. The fire emitted no dense  
10 smoke or obnoxious odors.

11 V.

12 In the afternoon of April 11, 1975, an unknown person summoned the  
13 Kelso Fire Department to extinguish Mr. Salsbury's fire. The fire was  
14 extinguished without difficulty.

15 VI.

16 A Notice of Violation was issued to appellant Salsbury on April 21,  
17 1975, citing his "Permitting and maintaining an open fire in violation  
18 of Section 4.01, of Regulation I, of the Southwest Air Pollution Control  
19 Authority, on or about April 11, 1975, 6:00 p.m. . . ."; a civil penalty  
20 of \$250 was imposed by respondent pursuant to Section 2.10 of  
21 Regulation I. At hearing, it was determined that appellant specifically  
22 had 1) failed to obtain a SWAPCA permit (Section 4.01(b)), and 2) burned  
23 a fire when a practical alternate method of disposal was available  
24 (Section 4.01(b)(2)(1)).

25 VII.

26 Any Conclusion of Law hereinafter recited which should be deemed

1 a Finding of Fact is hereby adopted as such.

2 CONCLUSIONS OF LAW

3 I.

4 Any Finding of Fact which should be deemed a Conclusion of Law is  
5 hereby adopted as such.

6 II.

7 The Pollution Control Hearings Board has established a policy (see  
8 PCHB Nos. 868 and 869, Lloyd's of Washington, Inc. v. PSAPCA) that the  
9 good faith efforts of private citizens to comply with regulatory  
10 provisions cannot be ignored by the regulatory agency involved and such  
11 effort will be considered by this Board. The good faith efforts of  
12 appellant Salsbury and the misleading nature of the information given  
13 him by a responsible public official are uncontroverted in this case.

14 III.

15 Technical violation of SWAPCA's Regulation 4.01 did occur. However,  
16 by assessing the maximum fine permissible under SWAPCA Regulation I,  
17 Article II, Section 2.10, it is clear that SWAPCA did not consider  
18 appellant's efforts to comply with the regulation in its assessment of  
19 his penalty. Such efforts should have been considered. Having considered  
20 the circumstances of this matter, the civil penalty should be reduced to  
21 \$50, and the payment thereof suspended as hereafter provided.

ORDER

The civil penalty imposed is reduced from \$250 to \$50, payment of which is suspended.

DATED this 19TH day of December, 1975.

*William A. Harrison*  
WILLIAM A. HARRISON, Hearing Examiner